

DRAFT- FOR SETTLEMENT PURPOSES ONLY
REQUIRES FINAL APPROVAL BEFORE FINALIZING

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	
ExxonMobil Oil Corporation)	NPDES Appeal No. 08-23
)	
NPDES Permit No. MA0000833)	
_____)	

MEMORANDUM OF UNDERSTANDING

Now comes Region 1 of the United States Environmental Protection Agency (“Region”) and the ExxonMobil Oil Corporation (“ExxonMobil”), by and through the undersigned counsel, and hereby agree as follows:

WHEREAS, the Region reissued NPDES Permit No. MA0000833 to ExxonMobil on September 29, 2008;

WHEREAS, ExxonMobil timely filed a petition for review by the Environmental Appeals Board contesting certain conditions of the permit ~~on~~ October 28, 2008;

WHEREAS, the parties have engaged in settlement negotiations since that time to resolve the disputed permit conditions which proposal contemplates a new and different permitting scheme to separately address dry weather and wet weather flows involving the redesign of the effluent treatment system and construction of a continuous flow treatment system, as well as other substantial infrastructure changes;

WHEREAS, the parties have reached agreement in connection with a proposed Permit Modification which will resolve the pending permit dispute and achieve improved overall surface water discharge quality;

WHEREAS, the parties agree that these effluent treatment system improvements require a reasonable time to design, procure, construct, and commission;

NOW, THEREFORE, ~~for good and valuable consideration, including resolution of the pending permit dispute,~~ the parties hereby agree as follows:

1. The Region will promptly withdraw the Contested Permit Conditions identified in the Notice of Uncontested and Severable Conditions dated November 20, 2008 ~~thereby rendering ExxonMobil's appeal moot, and ExxonMobil will concurrently withdraw its petition for review, thereby rendering ExxonMobil's appeal moot,~~ which appeal shall subsequently be dismissed.
2. The Region will provide a draft Statement of Basis (and/or Fact Sheet) to support the anticipated Draft Permit Modification pursuant to its authority under 40 CFR § 124.19(d) for review and comment by ExxonMobil prior to issuance of the Draft Permit Modification. The parties agree to work in good faith to jointly develop said Statement of Basis and/or Fact Sheet.
3. The Region will issue the Draft Permit Modification attached hereto as Exhibit A, which is the result of this negotiated settlement of the disputed permit proceeding.
4. On or before September 15, 2009, ExxonMobil shall provide the Region with a copy of its conceptual design basis for the proposed facility modifications certified in accordance with 40 CFR § 122.22.
5. On or before November 1, 2009, ExxonMobil shall provide the Region with a copy of its detailed design documentation in connection with modifications associated with Outfalls 01A and 01B certified in accordance with 40 CFR § 122.22.

6. On or before April 15, 2010, ExxonMobil shall provide the Region with a copy of its detailed design documentation in connection with modifications associated with Outfall 01C certified in accordance with 40 CFR § 122.22.

7. On or before June 15, 2010, ExxonMobil shall design, procure, construct, and place in service modifications associated with Outfalls 01A and 01B as described in the detailed design information previously submitted to the Region.

8. On or before November 15, 2011, ExxonMobil shall design, procure, construct and place in service modifications associated with the new continuous flow treatment system associated with Outfall 01C.

9. Upon consideration of the actions and implementation milestones contemplated by paragraphs 4 through 8 above, and the circumstances of this case, Unless ExxonMobil fails to meet a deadline identified in paragraphs 4 through 8 above, without justification reasonably satisfactory to the Region, the Region has concluded that shall not issuance of the final Permit Modification prior to after November 15, 2011, is reasonable and intends to issue such modification after such date.

10. The parties agree that the (A) (1) continuous treatment system, (2) corrugated plate separator, and (3) conventional oil water separator, when operated in accordance with Part I.A.23 of the Draft Permit Modification (Wastewater Treatment System Flow), and the (B) remedial actions to eliminate infiltration of light non-aqueous phase liquid (LNAPL) into the storm sewer system completed under the Massachusetts Contingency Plan, 310 C.M.R. 40.000 *et seq*, as specifically set forth in the ~~Permittee's~~ ExxonMobil's February 19, 2009 Release Abatement Measure Plan, 310 C.M.R. 40.0444 *et seq*, will, in combination, constitute “material and substantial alterations or additions to the permitted facility” within the meaning of 33 U.S.C.

§ 1342(o)(2)(A). Polycyclic Aromatic Hydrocarbons (PAHs) sampling results collected in accordance with Part I.A.2 of the Permit Modification after implementation of such material and substantial alterations or additions to the permitted facility and that are below the Minimum Level (as defined in Part I.A.1 of the Draft Permit Modification) for PAHs will constitute “information...not available at the time of permit issuance” within the meaning of U.S.C. § 1342(o)(2)(B)(ii). When the Permit is re-issued on or after January 1, 2014, ~~the~~ PermitteeExxonMobil may use (a) quarterly sampling results, and (b) a contemporaneous Storm Water Pollution Prevention Plan (SWPPP) that assures such discharge will continue to meet applicable water quality requirements consistent 33 U.S.C. § 1342(o)(3) through the application of Best Management Practices, as a basis under applicable anti-backsliding requirements for eliminating the numeric PAH effluent limits on discharges from outfall 01A to the culvert to Island End River.

~~11. Neither Party will be responsible for, or be in breach of this Memorandum of Understanding for failures or delays in the performance of this agreement due to any act of God or the public enemy, war, insurrection, riot, fire, earthquake, storm, flood, sickness, accident, civil commotion, terrorism, labor strike or work stoppage, act of government or any other cause wholly beyond its control, and not due to its own negligence or that of its contractors or representatives, and which cannot be overcome by the exercise of due diligence. A Party affected by any such circumstances will give prompt written notice thereof to the other Party; will attempt to mitigate the effects of such event on its obligations hereunder; and will resume performance promptly upon the cessation of such event.~~

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11. This Memorandum of Understanding will be come effective on the date fully-executed as noted below. This Memorandum of Understanding may be modified at any time by the mutual written consent of the parties.

~~12.~~

**U.S. Environmental Protection Agency,
Region 1**

By its counsel,

Samir Bukhari
Office of Regional Counsel
U.S. EPA-Region 1 (RAA)
One Congress Street, Suite 1100
Boston, MA 02114
Phone: (617) 918-1038
Fax: (617) 918-0038

July __, 2009

ExxonMobil Oil Corporation

By its counsel,

Dianne R. Philips
Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Phone: (617) 573-5818
Fax: (617) 523-6850

July __, 2009

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